IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 8121 of 2004(P)

CC.17/2004 of J.M.F.C.-I, ALUVA
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PETITIONER:

V.M.NAZER, SON OF MOHAMMED,
VATTEKKATTU HOUSE, ERAMALLOOR P.O., ERUMALAPPADY,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
CITY TRAFFIC, EAST EDAPPALLY, ERNAKULAM.

3. COMMISSIONER OF POLICE, KOCHI.

4. MR.BENNY BEHANAN, AGED 49 YEARS,
SON OF THOMAS, ONNUVEETTIKKUDY, THRIKKAKKARA,
ERNAKULAM (GENERAL SECRETARY, K.P.C.C.).

R1 TO R3 BY ADV. SRI. SHYSON P. MANGUZHA, PP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 8121 OF 2004

Dated this the 30th day of July, 2007

JUDGMENT

The grievance of the petitioner is that though it was the driver of the vehicle in which the 4th respondent was travelling who was the real culprit, the police would file final report implicating the petitioner who was innocent as the accused and that, though the private complaint filed by him was forwarded by the learned Munsiff under Section 156 (3) of the Cr.PC for investigation and the police did register crime No.2361 of 2003, in that crime, further enquiry was dropped and a final report was submitted on the reason that Crime No.2176 of 2003 implicating the petitioner as accused is registered already.

2. In the statement filed by the Circle Inspector of Police on behalf of the 3rd respondent, it is stated as follows:

> "4. The Judicial First Class Magistrate Court II Aluva has accepted the final report as Refer No.7/04 a true copy of the same is produced and marked as Annexure R2(a). But it is noticed that the investigating officer of Crime 2361/03 has not been issued the R.C. Notice to the petitioner that the counter foil of the R.C. Notice is not seen kept in the C.D. File and this matter has not mentioned in the Final Report."

3. Mr.M.P.M.Aslam submits that the petitioner did not receive the RC notice from the investigating officer regarding the final report in Crime No.236 of 2003 and also that he did not receive any intimation from the learned Magistrate either regarding the acceptance of the final report submitted by the investigating officer in Crime No.2361 of 2003. For want of such intimation, the petitioner has been deprived of an opportunity to file a protest complaint. It has been repeatedly held by the Supreme Court that while the Magistrate proceeds to accept the final report submitted by the investigating agency under Section 173 Cr.PC and to drop further proceedings against the accused, the first informant must be given notice.[See **Union Public Service Commission v. S.Papaiah** (AIR 1997 SC 3876) **Bhagwant Singh v. Commissioner of Police** ((1985) 2 SCC 537)] Considering the above submissions, I dispose of the Writ Petition issuing the following directions:

The learned Magistrate will verify whether intimation has been issued to the petitioner regarding the acceptance of the final report submitted by the investigating officer in Crime No.2361 of 2003. If it is revealed that no intimation has been issued to the petitioner as he contends, the learned Magistrate will see that intimation is issued to the petitioner forthwith, so that the petitioner if so advised can file a protest complaint. Even if it is seen hat intimation is issued to the petitioner, the

learned Magistrate will entertain any application filed by the petitioner for further investigation under Section 173(8) into Crime No.2361 of 2003 with notice to all concerned parties including the State and the driver of the vehicle allegedly involved in that crime and dispose of that application as early as possible in accordance with law.

PIUS C. KURIAKOSE, JUDGE

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